



3-9-05

JP 3752  
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Arlington, VA 22313-1450 on March 7, 2005

By Jean Bove Jean Bove

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: Jay Roth et al.  
SERIAL NO.: 10/016,761 Confirmation No. 3433  
FILED: 10/30/2001  
GROUP: 3752  
EXAMINER: Dinh Q. Nguyen  
FOR: **APPARATUS AND METHOD FOR COMBINING  
LIQUIDS AND FILLERS FOR SPRAY  
APPLICATION**  
DOCKET NO.: 7088-102/10102638

**WITHDRAWAL OF ATTORNEY UNDER  
37 CFR §10.40(c) (i)(iv) and (vi) and (3)**

865 S. Figueroa St. Ste. 2800  
Los Angeles CA 90017  
(213) 892-9237

Commissioner of Patents  
2900 Crystal Drive  
Arlington, VA 22202-3513

Sir:

I, Robert Berliner, attorney of record in the above-identified application, respectfully request permission to withdraw from all further responsibility in this case in accordance with 37 C.F.R. § 1.36.

We respectfully request that you communicate directly with the above-identified applicant. The last known address we have for him is: **Jay Roth, 7656 Formula Place, Suite A, San Diego, CA 92121.**

This is to advise that we have forwarded the Office Action mailed by the PTO on November 16, 2004, to the client on December 1, 2004, advising the client of the contents thereof. A copy of the transmittal letter is attached (Exhibit 1).

The bases for this request are several, one being that, despite numerous attempts, the client refuses to respond to any correspondence. On January 27, 2005 the undersigned emailed the client, and on February 14, 2005 we again attempted to communicate with the client and requested that he pick up his files or give us the name and address of counsel to which he wanted the files sent. A copy of the email and letter are attached. (Exhibit 2), confidential information has been deleted. No acknowledgment and/or instructions either verbal or written have been received.

Another bases is that the client has failed to pay our invoices for an unreasonable period of time.

In view of the fact that the client refuses to communicate with the undersigned in any manner, has not paid for services rendered, or disbursements made on his behalf, has a significant outstanding balance owing for over eight months and has not made any attempt to reduce the balance, or made any attempt to work out a payment program, it is hereby requested that the Patent and Trademark Office communicate directly with the Mr. Roth at the above address and withdraw the undersigned as counsel.

In accordance with 37 C.F.R. § 10.40(a) a copy of this request, including attachments, is being sent to applicant via Federal Express.

Please telephone the undersigned if any additional information is required.

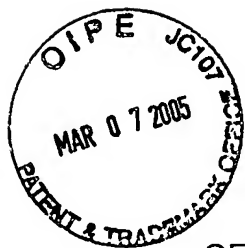
Respectfully submitted,

FULBRIGHT & JAWORSKI, LLP



Robert Berliner  
Registration No. 20,121

(213) 892-9237

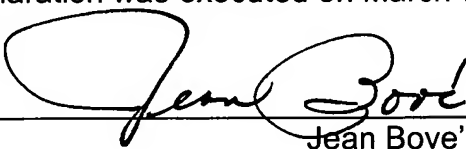


### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing WITHDRAWAL OF ATTORNEY was served upon applicant via Federal Express this 4<sup>th</sup> day of March, 2005 addressed as follows:

Jay Roth  
7656 Formula Pl., Suite A  
San Diego, CA 92121

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on March 7, 2005.

  
\_\_\_\_\_  
Jean Bove'



**FULBRIGHT & JAWORSKI L.L.P.**

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December 1, 2004

Mr. Jay Roth  
7656 Formula Place, Suite A  
San Diego, CA 92121

Re: U.S. Patent Application Serial No. 10/016,761  
**"APPARATUS AND METHOD FOR COMBINING LIQUIDS  
AND FILLERS FOR SPRAY APPLICATION"**  
Inventors: Roth, et al.  
Our Docket No. 7088-102XX/10102638

Dear Jay:

I am pleased to advise that we received an Office action, copy enclosed, in which the Examiner has allowed claims 1 - 7 and 10. Claims 8 and 9 have continued to be rejected, but I am proposing an amendment that may get them allowed as well. (Claims 11 - 16 were withdrawn following a requirement for restriction and have not yet been examined). The allowed claims are shown on the DRAFT of a proposed response, as is the proposed amendment to claim 8. Claims 8 and 9 in their present form are:

8. An apparatus for combining at least one liquid component with a filler component, whereby to form a sprayable composition, said apparatus comprising: (a) a filler component holding system; (b) a liquid component pumping system; and (c) a spray gun assembly, wherein said liquid and filler components sprayed separately and simultaneously, intersect and combine.

9. The apparatus of claim 8, wherein said spray gun assembly comprises a spray gun nozzle having an outer chamber whereby said filler component is pumped, said outer chamber circumferentially surrounding an inner chamber whereby said liquid component is pumped.

I propose to amend claim 8 so that it reads (added material is underscored):

8. An apparatus for combining at least one liquid component with a filler component, whereby to form a sprayable composition, said apparatus comprising: (a) a filler component holding system comprising a pressurized container having a conduit having an orifice that enables the filler to leave the container through the conduit against gravity; (b) a liquid component pumping system; and (c) a spray gun assembly, wherein

Mr. Jay Roth  
December 1, 2004  
Page 2

said liquid and filler components sprayed separately and simultaneously, intersect and combine.

We will also have to have formal drawings made. Once I hear back from you, I will get an estimate for that, but we can file the proposed response before that.

A response must be filed by February 16, 2005 without the payment of extension fees. However, if we file a response before January 16, 2004, it will facilitate getting an advisory action in the event the Examiner does not want to allow claims 8 and/or 9.

Of course, please let me know if you want me to elaborate on any of the foregoing.

Very truly yours,



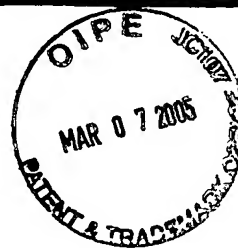
Robert Berliner

RB:jb  
Enclosures

**Berliner, Robert**

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**From:** Berliner, Robert  
**Sent:** Thursday, January 27, 2005 11:15 AM  
**To:** 'jay@sprayliner.com'  
**Subject:** Accounts Receivable



Jay:

On November 30, 2004, I emailed you, then wrote to you on December 1, 2004, reporting on a favorable Office Action and enclosing with my letter a proposed response. We have not heard further from you.

I have now been advised by Peter Mason, the new managing partner of my office, that your account is seriously in arrears and that you have not made any payment on this account in over 7 months. A summary from our computer is below:

Peter is particularly concerned because there remains a number of matters that need attending, namely the response to the latest Office Action (I sent you a draft with my December 1, 2004 letter) and the filing of up to three divisional applications on aspects of the invention that were previously subject to a requirement for restriction. If you choose to file any of them, at least one must be filed before issuance of the parent application.

As a result I have been told that unless the account is cleared, we can no longer provide any services to you. This is not a step lightly taken, but I have been given little choice.

Jay, please respond to this email as soon as possible, advising what steps will be taken to clear the account. Alternatively, please advise as to the identification of an attorney to whom we can transfer these files. The response to the outstanding Office Action must be filed by February 16, 2005 to avoid extension fees. Up to three months additional time can be obtained but with increasingly costly extension fees, and with an appeal fee, and/or additional filing fees if a request for continued prosecution must be filed.

If we do not hear from you by February 10, 2005, with either the steps referred to above that will be taken to clear the account, or an identification of the attorney to whom you want to transfer the files, then we will send the file to you and withdraw as your attorney.

Client #	060885	
Joint Group		
Media		
Country	USD	US Dollar
Rate	4	
Select Detail	Time & Fee Summary	
	Account Receivable	Unbilled Fees/Costs
0-30		
31-60		
61-90		
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Total		

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February 14, 2005

Mr. Jay Roth  
7656 Formula Place, Suite A  
San Diego, CA 92121

Re: U.S. Patent Application Serial No. 10/016,761  
**"APPARATUS AND METHOD FOR COMBINING LIQUIDS  
AND FILLERS FOR SPRAY APPLICATION"**  
Inventors: Roth, et al.  
Our Docket No. 7088-102XX/10102638

Dear Jay:

Enclosed is a copy of our letter of December 1, 2004 which is self-explanatory and to which we have not received a response.

Enclosed are copies of all of your unpaid invoices totaling \$ [REDACTED] which have not been paid.

Fulbright & Jaworski has no choice but to cease representation of you and, of course, will **not advance any additional funds** for you. In view of the fact that you have made no effort to reduce the large outstanding balance, nor have you even contacted us in connection with the balance, nor responded to our letter of December 1, 2004 requesting timely instructions us with regard to the above-identified patent application, we have no alternative but to request that you pick up your files or give us the name of your new attorney to send them to. We also require that you work out a payment plan with us in order to clear up this long overdue balance.

This will also confirm that this firm will take no further action in connection with this application and it will be automatically abandoned if you do not seek other counsel. We strongly urge that you seek other counsel to protect your intellectual property rights.

Very truly yours,

  
Robert Berliner

RB:jb  
Enclosures



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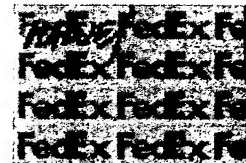
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	1:54 AM Departed FedEx location	LOS ANGELES, CA	
Feb 15, 2005	8:28 PM Arrived at FedEx location	LOS ANGELES, CA	
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